

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 45 OF 2006.

IN

SECOND APPEAL NO. 27 OF 2006.

Ashok Ambadas Gangane.

... Applicant.

Versus.

Pune Municipal Corporation & others. ... Respondents.

Shri V.P.Sawant for the Applicant.

Shri R.G.Ketkar for the Respondents Nos.1 and 2.

Shri R.V.More for the Respondent No.3.

CORAM : ABHAY S.OKA, J.

DATED : 2nd May, 2006.

P.C.:

1. Rule. The learned Advocates appearing for the Respondents waive service.

2. As the Second Appeal has been admitted for final hearing, interim relief in terms of prayer clause (a) deserves to be granted. However, the Applicant will have to be put to terms.

3. Hence the following order:

i) Civil Application is allowed in terms of prayer clause (a) subject to condition that the Applicant will file an undertaking in this Court in writing within a period of three weeks from today stating therein that

he will not create any third party interests in respect of the suit structure and he will not part with possession of the suit structure in favour of any third party and he will not carry out any additions and alterations to the suit structure without the permission of this Court.

ii) If the undertaking is not filed within the stipulated time, the interim relief granted will stand vacated without reference to the Court.

iii) If the Applicant commits breach of any of the clauses of the undertaking, it will be open for the Respondent-Corporation to move this Court for vacating the interim relief without prejudice to their other available remedies.

4. The learned Advocate for the Respondents Nos.1

and 2 states that the challenge in the suit filed by the Appellant was confined to notices dated 13th February 1997 and 11th February 1997. He, therefore, submitted that notwithstanding the grant of interim relief, liberty may be granted to the Respondents Nos.1 and 2 for demolishing part of the structure for the purpose of road widening. The said prayer is opposed by Shri

Sawant appearing for the Applicant/Appellant.

5. The interim relief granted by this Court restrains the Respondents Nos.1 and 2 from taking any action on the basis of the notices which are impugned in the suit. The order of injunction does not prohibit the Respondents Nos.1 and 2 from taking action under any other provisions of law. However, it is made clear that if action of demolition is to be taken against the suit structure, the Respondents Nos.1 and 2 will not do so without following the principles of natural justice.

Judge.